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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Yukoh Kobayashi, Petitioner,
v.
Robert Yukio Nakamura, Respondent.

On Petition for a Writ of Certiorari to
the Court of Appeal of California,
Second Appellate District, Division Four

PETITION FOR A WRIT OF CERTIORARI

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Petitioner In Pro Per

October, 1996

19 pp

QUESTIONS PRESENTED

The questions presented are:

1. Whether a California state court may, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, administer state laws that may be fair on their face so as to deny adequate appellate review to the poor and non-lawyers, while granting such review to all others, by totally denying record of oral proceedings, intentionally misquoting the languages of law and party's motion papers, and entering a judgment of dismissal of appeal by a single judge without concurrence of two other judges and without providing a written statement of reasons when an indigent appellant in a civil appeal, who cannot afford to pay a reporter's fee nor hire an attorney, elects an economical settled statement in lieu of an expensive reporter's transcript and state constitution requires both concurrence of two judges and a written statement of reasons in decision of an appeal.

2. Whether a California state court has properly interpreted, applied, or extended prior Supreme Court decisions when the state court denied adequate appellate review to the poor and non-lawyers while granting such review to all others, totally denied record of oral proceedings, intentionally misquoted the languages of law and party's motion papers, and entered a judgment of dismissal of appeal by a single judge without concurrence of two other judges and without providing a written statement of reasons where an indigent appellant in a civil appeal, who cannot afford to pay a reporter's fee nor hire an attorney, elects an economical settled statement in lieu of an expensive reporter's transcript and state constitution requires both concurrence of two judges and a written statement of reasons in decision of an appeal.

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Petitioner Yukoh Kobayashi respectfully petitions for a writ of certiorari to review the judgment of dismissal of appeal of the Court of Appeal of California, Second Appellate District, Division Four in this case.

1. OPINIONS BELOW

The Court of Appeal of California, Second Appellate District, Division Four, issued no opinion in dismissing an appeal of petitioner [App., *infra*, 3a] and also in summarily denying his petition for rehearing [App., *infra*, 4a]. Nor the Supreme Court of California issued an opinion in summarily denying a petition for review [App., *infra*, 5a].

2. JURISDICTION

The judgement of dismissal of appeal by the Court of Appeal of California, Second Appellate District, Division Four, was entered on September 8, 1995 [App., *infra*, 3a]. The same Court denied a timely petition for rehearing on October 10, 1995 [App., *infra*, 4a]. On November 29, 1995, the Supreme Court of California denied a petition for a discretionary review [App., *infra*, 5a]. The jurisdiction of this court is invoked under 28 U.S.C. Sec.1257 (a).

On February 12, 1996 Justice O'Connor extended the time to file this petition to and including March 28, 1996.

3. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 7 of California Rules of Court (CRC) provides, in relevant part, that an indigent appellant in civil appeal is permitted to set forth the oral proceedings of trial court by an economical settled statement in lieu of an expensive reporter's transcript if the appellant is without adequate funds to order and pay for a reporter's transcript, that a party who has proceeded in the trial court in forma pauperis is deemed without adequate funds for a transcript, and that trial judge shall settle the statement and fix the time within which the appellant shall engross it as settled.

CRC Rule 12 (a) provides augmentation and correction of record on civil appeal stating that upon request by a party, a judge of the reviewing court may order that a settled statement of portions of oral proceedings be

prepared and transmitted to it.

California Constitution Article VI, Sec.3 and Sec.14 require that decisions of courts of appeal must be made with concurrence of two other judges and in writing with reasons stated.

4. STATEMENT OF THE CASE

Petitioner sued a landlord and his attorney for wrongful eviction, malicious prosecution, abuse of process, and other causes of action on September 9, 1988 in the Superior Court of Los Angeles County, California. Petitioner was indigent and a non-lawyer, and proceeded in both state trial and appellate courts in forma pauperis without counsel. The trial court dismissed all causes of action, and petitioner appealed as of right to the Court of Appeal, State of California, Second Appellate District.

On appeal, due to lack of fund, petitioner elected to present oral proceedings of trial court by economical settled statements, in lieu of an expensive reporter's transcript, under CRC Rule 7 and by appendices in lieu of clerk's transcript under CRC Rule 5.1. Trial judge rejected and refused to settle, without leave to amend, appellant's proposed condensed statements in narrative form of such portions of the oral proceedings as petitioner deemed material to the determination of his points on appeal, finding the statements as "constituting argument and contentions, rather than a factual record."

As a result, no record of oral proceedings of trial court was before the appellate court. Petitioner requested the court to direct trial court to settle and transmit settled statements to the reviewing court as CRC Rule 7 provided, but the court refused [App., *infra*, 1a-2a]. The appellate court also denied petitioner's timely motion for augmentation of record of oral proceedings, made under CRC Rule 12 (a) for the reason that he discovered first time in the trial court file a new document which was not in the file before, and thus the unexpected discovery necessitated the requested record of oral proceedings without any fault in his part, but again the appellate court denied the motion.

With no record of oral proceedings on appeal, petitioner was unable to prepare his full opening brief and the same

single judge, who totally denied settled statements as well as augmentation of record, dismissed petitioner's appeal without oral argument, without concurrence of two other judges and without providing a written statement of reasons.

In motion made in the Court of Appeal for an order compelling trial court to settle settled statements, petitioner presented that the court of *Stevens v Superior Court* 160 CalApp2d 264, 268-269 (1958) has determined that trial court cannot strike a proposed settled statement out, but must proceed to settle it. The Court of Appeal responded to it citing the same case by stating that "a trial court may strike a proposed settled statement which is wholly insufficient" [App., *infra*, 1a] and denied the motion. This was a clear misquotation of the language of the case because the court has omitted key three words "and a fraud" from the true statement of the Stevens' court, which is:

> "it is only where the proposed narrative statement is wholly insufficient, a sham and a fraud, that the court may strike it" [*Stevens v Superior Ct., supra*, 268-269].

It is clear that trial court's finding of "constituting argument and contentions" by no means implies "a fraud."

Moreover, in response to petitioner's separate and independent request for augmentation of record on appeal based on an independent ground, the Court of Appeal misquoted petitioner's statement appearing in his moving paper by stating that "appellant now requests us to compel the trial court to settle and transmit settled statements so that additional settled statements can be submitted and settled in the trial court."

These systematic misquotations of the languages of law as well as a petitioner's motion paper against petitioner by the Court of Appeal were clearly intentional because it denied petitioner's subsequent petition for rehearing even though these misquotations were distinctly pointed out.

With such discriminatory mind, the same and single judge of the appellate court, who misquoted the languages of law and petitioner's motion paper and totally denied

record of oral proceedings, dismissed the petitioner's appeal without concurrence of two other judges.

The Court of Appeal was the California state court of last resort in the civil appeal.

After the surprise dismissal of the appeal, petitioner filed petition for rehearing in that court on 9-22-95 and timely and properly raised the federal questions sought to be reviewed by this Court at pages 14-16 of the petition presenting the following two propositions:

> "10. This court discriminated against the poor who cannot afford to pay reporter's fee nor to hire counsel, and thus violated appellant's rights to equal protection of law as well as due process of law guaranteed by *the U.S. and California Constitutions*."
>
> "11. This court consistently and systematically discriminated against this appellant without counsel and thus violated appellant's rights to equal protection of law as well as due process of law guaranteed by *the U.S. and California Constitutions*."

The Court of Appeal summarily denied the petition without hearing nor opinion [App., *infra*, 4a].

Petitioner further timely filed on 10-18-95 petition for review in the Supreme Court of California again raising the federal questions at pages 9-10 of the petition presenting the following propositions:

> "14. Did court of appeal violate the equal protection of law as well as the due process of law guaranteed by *the U.S. and California Constitutions* against the poor when it discriminated against appellant who could not afford to pay reporter's fee or to hire counsel?"
>
> "15. Is a party in pro per or a non-lawyer not entitled to as much due consideration by a court as a lawyer?"

The state supreme court also summarily denied a discretionary review without hearing nor opinion.

The federal questions sought to be reviewed by this

Court relate to appellate proceedings in the state court of appeal, not in the trial court, and were born when the court of appeal made a surprise decision of dismissal of petitioner's appeal totally denying a record of oral proceedings of trial court to indigent and non-lawyer petitioner. Thus, there was no other method of bringing the questions to the attention of the state courts.

5. REASONS FOR GRANTING THE PETITION

Our society is, regrettably, full of bias, prejudice, and discrimination. Even our justice system is not an exception. Bailiffs, clerks, and other court officers are all possible sources of bias, prejudice, and discrimination. Only problem in asserting such injustice is that one's mental state is more difficult to prove than a physical state.

This case presents one of injustices in our current justice system done by state courts and their judges against indigent litigants who cannot afford to hire counsel.

Of course, it is not possible to know exactly the state of mind of an individual judge, but there exist some (or many) judges who, consciously or unconsciously, often reject arguments presented by a party in pro per or a non-lawyer while accepting the same arguments if presented by a lawyer. Such mental attitude may have some justification such as inferiority in understanding and presenting law, but it is exactly the same mental attitude that justified the segregation against the black for more than a century [*Brown v Board of Education* 347 US 483 (1954)]. Segregation had to be adjudicated as illegal by this Court, and so must discrimination against indigents and non-lawyers. In order for our justice system to become a true, modern justice system some day, then this Court must realize and admit the fact that there exists discrimination against the poor and non-lawyers by judges, and then must adjudicate that such discrimination is illegal to abolish it.

It is said that "because lawyers 'police' themselves, 90% of the complaints filed against lawyers are dismissed" (HALT, an organization of Americans for legal reform, Washington, DC.). Indeed, petitioner's case was no exception as presented in Statement of the Case, *supra*.

Therefore, federal rights are infringed by the state court,

it is necessary to determine whether state courts have properly interpreted, applied, or extended prior decisions of this Court, the decisions of the state court are erroneous, and the questions presented are important.

Although the total number of indigent and non-lawyer litigants who are suffering continuing discrimination by state judges and courts is huge on a nationwide basis, the majority may be unable to secure a review of this Court due to lack of skills and knowledge to comply with high technicality in correctly filing and presenting a petition. As a result, state courts will only rarely obtain guidance from this Court on these issues, and the opportunities for this Court to review will be few. This case presents such opportunity.

5.1. Federal Rights Are Infringed by the Application or Administration of a State Statute and Constitution

Petitioner was indigent and a non-lawyer, and proceeded in both state trial and appellate courts in forma pauperis without counsel.

While CRC Rule 7 permitted an indigent party in civil appeal to set forth the oral proceedings of trial court by an economical settled statement in lieu of an expensive reporter's transcript and also provided that trial judge shall settle the statement and fix the time within which the appellant shall engross it as settled, both state trial and appellate courts denied a settled statement to petitioner.

Also, California statute provides to all civil litigants as of right an appeal from a superior court to a court of appeal, but the Court of Appeal dismissed petitioner's appeal without affording him an opportunity to present record of oral proceedings of trial court.

Furthermore, California Constitution Article VI, Sec.3 and Sec.14 require that decisions of courts of appeal must be made with concurrence of two other judges and in writing with reasons stated. Nevertheless, a single judge of the Court of Appeal dismissed petitioner's appeal without concurrence of two other judges or providing a written opinion.

All these consistent, systematic, arbitrary and erroneous actions of the state court were done simply because

petitioner and appellant therein was an indigent and non-lawyer. It was indeed an invidious discrimination.

Discrimination against the indigent is a discrimination between the rich and the poor which violates the equality guaranteed by the Fourteenth Amendment of the US Constitution [*Douglas et al v California* 372 U.S. 353, 355, 357-358 (1963); *Griffin v Illinois* 351 U.S. 12 (1955)]. Similarly and for the same legal principle, discrimination against non-lawyers should be a violation of the equality guaranteed by the Fourteenth Amendment. However, petitioner is unable to find any prior decision of federal courts on this issue of discrimination against non-lawyers. Therefore, this case presents a timely and rare opportunity for this Court to address the issue, since there are systemic reasons why few of the decisions below receive appellate review of this Court as explained above.

The Griffin's court, *supra*, states:

> "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money to buy transcripts." (p.19)

Furthermore, state court's denial of the one and only appeal of petitioner as of right was a violation of the due process right guaranteed by the Fourteenth Amendment [*Griffin v Illinois, supra*, 18] when the state court denied a settled statement by arbitrarily and intentionally misquoting the languages of law and a petitioner's motion paper against him. Intentional or purposeful discrimination in the administration of an otherwise nondiscriminatory law violates equal protection [*Snowden v Hughes* 321 US 1, 8 (1977)].

Due Process of Law protects against arbitrary action; Consequently, arbitrary action by the tribunal in the hearing of a cause or in its order violates due process [*Washington ex rel. Oregon R. & N. Co. v Fairchild* 224 US 510, 523 (1911)]. Due process requires that the tribunal be a fair [*Nebraska Press Assoc. v Stuart* 427 US 539, 562-563 (1976)] and impartial one [*Federal Constr. Co. v Curd* 179

Cal 489 (1918)].

Moreover, the federal court of *Day v Day* 12 Idaho 556, 86 P 531 (1906) determined that a cause shall not be heard before a prejudiced court, and this federal right was also infringed. It is clear that the state appellate court was prejudiced against indigent and non-lawyer petitioner because the court arbitrarily and intentionally misquoted the languages of law and a petitioner's motion paper against him.

And, a party otherwise entitled to appeal who, by the construction of a statute, is prevented from doing so, where such right is given to all others in similar cases, is thus deprived of the right of due process of law [*State ex rel. J. Hahn Bakery Co v Anderson* 269 Mo 381, 190 SW 857, 858 (1916)].

The state appellate court infringed these federal rights of petitioner, indigents, and non-lawyers by refusing to direct trial court to settle a settled statement, thus denying record of oral proceedings of trial court on appeal, thus denying the merits of the one and only appeal indigent petitioner had as of right, and finally dismissing the appeal [*Draper et al v Washington et al* 372 U.S. 487 (1963)].

5.2. It Is Necessary to Determine Whether State Courts Have Properly Interpreted, Applied, or Extended Prior Decisions of This Court

As shown above, this Court has decided that 1) discrimination against the indigent is a discrimination between the rich and the poor which violates the equality guaranteed by the Fourteenth Amendment; 2) state court's denial of the one and only appeal of petitioner as of right is a violation of the due process right guaranteed by the Fourteenth Amendment; 3) intentional or purposeful discrimination in the administration of an otherwise nondiscriminatory law violates equal protection guaranteed by the Fourteenth Amendment; 4) Due Process of Law protects against arbitrary action and thus arbitrary action by the tribunal in the hearing of a cause or in its order violates due process; 5) Due process requires that the tribunal be fair; and 6) a cause shall not be heard before a prejudiced court. It is extremely important and necessary for this

Court to determine whether the California appellate court has properly interpreted, applied, or extended these prior decisions of this Court when the state court denied adequate appellate review to the poor and non-lawyers while granting such review to all others, denied record of oral proceedings, intentionally misquoted the languages of law and party's motion papers, and entered a judgment of dismissal of appeal by a single judge without hearing, concurrence of two other judges, or providing a written statement of reasons where an indigent appellant in a civil appeal, who cannot afford to pay a reporter's fee nor hire an attorney, elected an economical settled statement in lieu of an expensive reporter's transcript and state constitution required both concurrence of two judges and a written statement of reasons in decision of an appeal.

5.3 The Decisions of the State Court Is Erroneous

The dismissal by the Court of Appeal of the one and only appeal indigent petitioner had as of right was very erroneous when he was diligently trying to perfect the appeal and no way in fault.

Also, the denial of settled statement of oral proceedings and augmentation of record on appeal to indigent appellant was equally wrong.

Furthermore, involuntary dismissal of an appeal is a decision on merits and thus dismissal by a single judge without two concurrent judges and without a written opinion was erroneous.

Therefore, the decisions of the state court were very wrong indeed.

This Court should grant this petition to correct these errors of the state court.

5.4. The Question Presented Is Important

The question of discrimination against indigent and non-lawyer litigants is getting more and more important because attorney fees are getting higher and higher every year and thus more and more litigants are forced to represent themselves in pro per without an attorney. Discrimination against non-lawyer litigants by judges has become a common practice in courts, but this question has rarely

been addressed by courts themselves. This is a nationwide issue of importance.

It is said that "because lawyers 'police' themselves, 90% of the complaints filed against lawyers are dismissed" (HALT, an organization of Americans for legal reform, Washington, DC.). Unless this Court grants certiorari, a fixed and continuous policy of unjust discrimination will continue in our justice system and people will suffer.

6. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

March 25, 1996

Yukoh Kobayashi
Petitioner In Pro Per

[Court of Appeal-Second Dist.
Filed Jun 21, 1995, Joseph A. Lane, Clerk]

In the Court of Appeal of the State of California
Second Appellate District, Division 4

Yukoh Kobayashi,	)No.BO72949
plaintiff and appellant,	)(SC No.C698162)
vs.	)
Shiro Abe, et al.,	)Order of state court
defendants & respondents.	)of appeal on motion

THE COURT:*

We have read and considered the motion of appellant, filed on May 30, 1995, in which he requests that we vacate our order of May 11, 1995, and order the trial court to prepare and/or transmit a settled statement of oral proceedings.

Appellant asserts that we cannot require him to file his brief until 30 days after the record on appeal is filed and the record has not been filed. Appellant ignores the fact that he elected to proceed by way of appellant's appendix pursuant to Rule 5.1 of the California Rules of Court in lieu of a clerk's transcript. Therefore, there is no clerk's transcript to be filed in this case, but, rather the appellant's appendix must be filed by appellant no later than his opening brief.

Appellant also requests that we compel the preparation and/or transmission of a settled statement in lieu of a reporter's transcript. On August 11, 1993, the trial court rejected appellant's settled statement "as constituting argument and contention, rather than a factual record."

A trial court may strike a proposed settled statement which is "wholly insufficient." [*Stevens v Superior Court* 160 CalApp2d 264, 268-269 (1958)]. Appellant apparently never took any measures in the trial court to correct the perceived deficiencies of his proposed statement, but rather filed a motion on October 6, 1994, requiring that we augment the record with "supplemental" settled statements.

On May 11, 1995, we denied that motion.

Appellant now requests us to compel the trail court to

"settle and transmit settled statements" so that "additional settled statements can be submitted and settled in the trial court..." Appellant fails, in form or substance, to address the trial court's rejection of his proposed settled statement.

The motion is denied. Appellant's opening brief and appendix shall be due on or before July 10, 1995, or the appeal will be dismissed.

s/Woods
*WOODS(A.), P.J.

* * * * *

[Court of Appeal-Second Dist.
Filed Sep 8, 1995, Joseph A. Lane, Clerk]

In the Court of Appeal of the State of California
Second Appellate District, Division 4

Yukoh Kobayashi,		)No.BO72949
plaintiff and appellant,		)(SC No.C698162)
vs.		)Decision of state
Shiro Abe, et al.,		)court of appeal
defendants &	respondents.	)dismissing appeal

THE COURT:

It appearing that the appellant is in default pursuant to Rule 17a, California Rules of Court, the appeal filed December 21, 1992, is dismissed.

s/Woods P.J.
Presiding Justice

* * * * *

[Court of Appeal-Second Dist.
Filed Oct 10 1995, Joseph A. Lane, Clerk]

In the Court of Appeal of the State of California
Second Appellate District, Division 4

Yukoh Kobayashi,	)No.BO72949
plaintiff and appellant,	)(SC No.C698162)
vs.	)Decision of state
Shiro Abe, et al.,	)court of appeal
defendants & respondents.	)denying rehearing

THE COURT:*
Appellant's petition for rehearing is denied.

s/Woods Epstein Vogel
*WOODS(Arleigh),P.J., EPSTEIN,J., VOGEL(C.S.),J.

* * * * *

[Supreme Court, Filed Nov 29 1995
Robert Wandruff Clerk]

In the Supreme Court of the State of California

Yukoh Kobayashi, plaintiff and appellant, vs.	)Civil No.SO49488)(2nd App.Dist.)Div.4,No.BO72949)
Shiro Abe, et al., defendants & respondents.	)Decision of state)supreme court)denying review

Petition for review DENIED.

s/LUCAS
Chief Justice

* * * * *